

UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS  
KANSAS CITY DIVISION

UNITED STATES OF AMERICA and the  
KANSAS DEPARTMENT OF HEALTH AND  
ENVIRONMENT, and Roderick L. Bremby as  
Secretary of the KANSAS DEPARTMENT OF  
HEALTH AND ENVIRONMENT,

Plaintiffs,

v.

MAGELLAN AMMONIA PIPELINE, L.P.,  
ENTERPRISE OPERATING PRODUCTS, L.L.C.,  
and MID-AMERICA PIPELINE, L.L.C.,

Defendants

CIVIL ACTION NO:

COMPLAINT

The United States of America, by authority of the Attorney General through his undersigned attorneys, and at the request and on behalf of the United States Department of the Interior (DOI), in its capacity as natural resource trustee, the Kansas Department of Health and Environment (KDHE), and Roderick L. Bremby, Secretary of KDHE, in his capacity as Trustee for state natural resources in Kansas, allege as follows:

NATURE OF ACTION

1. This is a civil claim for natural resource damages brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), and Section 311 of the Clean Water Act ("CWA"), 33 U.S.C. § 1321, for damages for injury to, destruction of, or loss of natural resources in or near Kingman, Kansas resulting from the release of anhydrous ammonia from a pipeline owned and operated by Defendants on or about October 27, 2004.

JURISDICTION AND VENUE

2. This court has jurisdiction over the subject matter of this claim pursuant to 28 U.S.C. §§ 1331, 1345, 1362 and 2201; 42 U.S.C. §§ 9607(a) and 9613(b); and 33 U.S.C. §§ 1321(e)(2) and (n).

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C.

§ 9613(b); 33 U.S.C. § 2717(b); and 28 U.S.C. § 1391(b).

#### PARTIES

4. Defendant Magellan Ammonia Pipeline, L.P. (“Magellan”) is a corporation organized under the laws of Delaware with its principal place of business located in Phoenix, Arizona. Magellan conducts business in the State of Kansas.

5. Defendant Enterprise Operating Products, L.L.C. (“Enterprise”) is a corporation organized under the laws of the State of Delaware and conducts business in the State of Kansas

6. Defendant Mid American Pipeline L.L.C. (“MAPL”) is incorporated in Delaware and conducts business in the State of Kansas.

7. Plaintiff the United States of America is a trustee for natural resources injured, destroyed or lost as a result of release of anhydrous ammonia from the pipeline owned and operated by the Defendants pursuant to federal statutes including but not limited to Section 107(f)(2)(A) of CERCLA, 42 U.S.C. § 9607(f)(2)(A), and Section 311(f)(5) of the Clean Water Act, 33 U.S.C. § 1321(f)(5). *See* Exec. Order No. 12,580, as amended by Exec. Order No. 12,077, 61 Fed. Reg. 45871 (Aug. 28, 1996); 40 C.F.R. § 300.600(b)(2).

8. Plaintiffs KDHE and the Secretary of KDHE are state trustees for natural resources injured, destroyed or lost as a result of release of anhydrous ammonia from the pipeline owned and operated by the Defendants pursuant to statutes including but not limited to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), 40 C.F.R. § 300.605, and K.S.A. 61 - 171u.

#### GENERAL ALLEGATIONS

9. Defendant Magellan owns an 1100 mile anhydrous ammonia pipeline that runs through six states from Borger, Texas to Mankato, Minnesota (“Pipeline”).

10. Defendant Enterprise was an operator of the Pipeline from 2003 to 2007.

11. Defendant MAPL was an operator of the Pipeline from 2003 to 2007.

12. On or about October 27, 2004, a break in the Pipeline resulted in the release of over 1 million pounds of anhydrous ammonia from the Pipeline into and around an un-named

Tributary to Smoots Creek, Smoots Creek and the Ninneschah River in and near Kingman, Kansas. (Hereinafter referred to as the "Kingman Release").

13. Investigations conducted by the Defendants and the State of Kansas in cooperation with the U.S. Department of Interior and other parties have concluded that the Kingman Release resulted in the contamination of aquatic resources with anhydrous ammonia which injured Natural Resources including, but not limited to, habitat, fish and macroinvertebrates in an un-named tributary leading to Smoots Creek and Smoots Creek.

#### RELEVANT LEGAL AUTHORITIES

14. Section 107(a) of CERCLA, 42 U.S.C. § 9607, provides that the owner or operator of a facility from which hazardous substances have been released is liable for "the damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release."

15. Anhydrous Ammonia is a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 40 C.F.R. § 302.6.

16. Under Section 107 of CERCLA, 42 U.S.C. § 9607, and 43 C.F.R. Part 11, the Plaintiffs, in their roles as natural resource trustees, are entitled to recover damages for injury to natural resources, including (1) the cost to restore, replace, or acquire the equivalent of such natural resources; (2) the compensable value of lost services resulting from the injury to resources; and (3) the reasonable cost of assessing injury to the natural resources and the resulting damages.

17. Section 311(b)(3) of the Clean Water Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances in a harmful quantity to the navigable waters and adjoining shorelines of the United States.

18. Section 311(f)(4) of the Clean Water Act, 33 U.S.C. § 1321(f)(4), provides that the owner or operator of any facility from which oil or a hazardous substance has been discharged in violation of Section 311(b)(3) of the CWA is liable for any costs or expenses incurred by the United States or State "in the restoration or replacement of natural resources damaged or destroyed as a result of the discharge."

19. Anhydrous Ammonia is a hazardous substance within the meaning of Section 311(a)(14) of the Clean Water Act, 33 U.S.C § 1321(a)(14), and pursuant to Section 311(b)(4) of the CWA, EPA has determined that amounts over 100 lbs of anhydrous ammonia may be harmful. See 33 U.S.C. § 1321(b)(4); 40 C.F.R. § 117.1(a), 117.3.

20. KSA 65-171u provides that any person who violates the provisions of KSA 65-171 and causes the death of, or injury to, fish, animals, vegetation or other resources of the state whether natural or structural . . . shall be liable to pay the state damages in an amount equal to the sum of money necessary to restock such waters, replenish or replace such resources and to otherwise restore the stream, lake or other water resource to its condition prior to the injury.

21. KSA 65-164 states in pertinent part, subsection (a) "No person, company, corporation . . . shall place or permit to be placed or discharge or permit to flow into any of the waters of the state any sewage . . . (b) For the purposes of this act "sewage" means the waste products . . . or other discharges . . . or other waste from manufacturing or other forms of industry."

#### FIRST CLAIM FOR RELIEF

##### Natural Resource Damages Under CERCLA as to All Defendants

22. The allegations set forth in paragraphs 1 through 21 are re-alleged and incorporated herein by reference.

23. Each Defendant is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

24. The Pipeline is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25. In the Kingman Release, Anhydrous Ammonia was "released" from the Pipeline into the "environment" within the meaning of Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. § 9601(22) and (8).

26. Anhydrous Ammonia is a "hazardous substance" within the meaning of Section 101(14) of CERCLA. 42 U.S.C. § 9601(14).

27. Defendant Magellan was the “owner” of the Pipeline within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), at the time of the Kingman Release.

28. Defendant Enterprise was an “operator” of the Pipeline within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), at the time of the Kingman Release.

29. Defendant MAPL was an “operator” of the Pipeline within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), at the time of the Kingman Release.

30. The Kingman Release resulted in the injury to, destruction of, and loss of natural resources in and near Kingman, Kansas, within the meaning of Sections 101(16) and 107(a)(4)(C) of CERCLA, 42 U.S.C. §§ 9601(16); 9607(a)(4)(C).

31. The United States has incurred and continues to incur costs related to the assessment of the loss of natural resources for which the United States is a trustee, resulting from Kingman Release.

32. KDHE incurred costs related to the assessment of the loss of natural resources for which KDHE is a trustee, resulting from the Kingman Release.

33. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the Defendants are liable to the Plaintiffs for damages for injury to, destruction of, or loss of natural resources at the Site, including the reasonable costs of assessing such injury, destruction, or loss, resulting from the Kingman Release.

## SECOND CLAIM FOR RELIEF

### Natural Resource Damages Under the Clean Water Act as to All Defendants

34. The allegations set forth in paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

35. The Pipeline is an “onshore facility” within the meaning of Section 311(f)(2) of the CWA, 33 U.S.C. § 1321(f)(2).

36. A discharge of Anhydrous Ammonia in a harmful quantity within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), occurred in the Kingman Release into an un-named tributary to Smoots Creek, into Smoots Creek, and into the Ninneschah River and the adjoining shorelines thereof.

37. The un-named tributary, Smoots Creek and the Ninneschah River are navigable waters of the United States within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

38. Anhydrous Ammonia is a hazardous substance within the meaning of Sections 311(a)(14) and (b)(3) of the Clean Water Act, 33 U.S.C. §§ 1321(a) (14) & (b)(3).

39. The amount of Anhydrous Ammonia discharged from the Pipeline in the Kingman Release exceeded the amount that EPA has determined may be harmful under Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4).

40. The Kingman Release damaged or destroyed natural resources belonging to, appertaining to, or under the exclusive management authority of the Plaintiffs within the meaning of Sections 311(b) and (f)(4) of the CWA, 33 U.S.C. §§ 1321(b) & (f)(4).

41. Defendant Magellan was an “owner” of the Pipeline within the meaning of Section 311(f)(1) of the CWA, 33 U.S.C. § 1321(f)(1), at the time of the Kingman Release.

42. Defendant Enterprise was an “operator” of the Pipeline within the meaning of Section 311(f)(1) of the CWA, 33 U.S.C. § 1321(f)(1), at the time of the Kingman Release.

43. Defendant MAPL was an “operator” of the Pipeline within the meaning of Section 311(f)(1) of the CWA, 33 U.S.C. § 1321(f)(1), at the time of the Kingman Release.

44. The Defendants are liable to Plaintiffs for the costs or expenses incurred by Plaintiffs in the restoration or replacement of natural resources damages or destroyed as a result of the Kingman Release under Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4).

### THIRD CLAIM FOR RELIEF:

#### Natural Resource Damages under KSA 65-171u

45. The allegations set forth in paragraphs 1 through 44 are re-alleged and incorporated herein by reference.

46. The Defendants have discharged or permitted sewage to flow into the waters of the State in violation of KSA 65-164.

47. The discharges described above have caused the death of, or injury to, fish, animals, vegetation or other resources of the state.

48. Pursuant to KSA 65-171u the Defendants are liable to pay the state damages in an amount equal to the sum of money necessary to restock such waters, replenish or replace such resources and to otherwise restore the stream, lake or other water resource to its condition prior to the injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Enter a judgment in favor of Plaintiffs against Defendants, for liability pursuant to CERCLA Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C), for all damages for injury to, destruction of, and loss of natural resources within the trusteeship of the United States, KDHE, and the Secretary of KDHE resulting from the Kingman Release including the unreimbursed past, present, and future costs of assessing such damages, the cost of restoring, replacing, and/or acquiring the equivalent of those injured resources, and the past, present, and future diminution in value of those resources pending restoration or replacement;

(2) Enter a judgment in favor of Plaintiffs against Defendants, pursuant to Section 311(f)(4) of the Clean Water Act, 33 U.S.C. § 1321(f)(4), for all costs of restoring, replacing, and/or acquiring the equivalent of natural resources damaged or destroyed as a result of the Kingman Release, including the costs of assessing such damages and the diminution in value of those resources pending restoration or replacement;

(3) Enter a judgment in favor of Plaintiff the State of Kansas against Defendants pursuant to KSA 65-171u for the amount equal to the sum of money necessary to restock state waters, replenish or replace resources and to otherwise restore the stream, lake or other water resource to its condition prior to the injury asserted herein;

(4) Enter a judgment in favor of Plaintiffs against Defendants for all costs of this action, including attorney's fees; and

(5) Award Plaintiffs such other and further relief as this Court may deem appropriate.

Respectfully submitted,

FOR THE UNITED STATES:

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FOR THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Dated: 9/19/08

Roderick L. Bremby, Secretary  
Kansas Department of Health and Environment

Dated: 9/19/08

L. Patricia Casey  
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Kansas Department of Health and Environment